Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

NO. 74-1628

BERNARD KORZEN
COUNTY TREASURER AND EX-OFFICIO
COUNTY COLLECTOR OF COOK COUNTY
RE 1971 AND 1972 REAL ESTATE TAXES
Appellee

versus

JOHN A. HUTTER
Appellant

APPEAL FROM
THE APPELLATE COURT OF ILLINOIS

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Appellee

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JURISDICTIONAL STATEMENT

1. (a) The Opinion of the Court, complete, is attached as appendix hereto.

(b) The Appellant filed objections to the Application of Appellee for judgement and order of sale of Appellants real estate for unpaid real estate taxes for the years 1971 and 1972.

(i) In the trial court, the collector moved to dismiss the objections to 1971 and 1972 real estate taxes because Hutter failed to pay said taxes in full under protest as required by (Ill. Rev. Stat. 1971 Ch 120, p 716).

Hutter claimed that this statute is repugnant to both the Illinois and United States Constitution and violates his right to due process.

Hutter also contended that Article 14.4 (b) of the Illinois Constitution of 1970 violates the Federal Constitution's guarantee of equal protection of the law in that Article IX p 4 (b) permits the classification of real property to the extent that the highest class may be taxed at a rate two and one-half times the lowest.

The trial court dismissed Hutter's objections and he appealed to the Appellate Court of Illinois, which affirmed the order of the lower court.

(ii) This appeal is from the decision of the Appellate Court of Illinois dated April 7, 1975.

The notice of appeal was filed June 6, 1975 in the Appellate Court of Illinois.

(iii) This appeal is filed in accordance with Paragraph 125 (2) or and other provisions of the rule which provides appeal where: "Validity of the Statute of any State on grounds of it being repugnant to the Constitution, treaties or laws of the United States and the decision in favor of its validity."

(IV) This appeal comes squarely within above rule.

The following cases are applicable:

Metlakatla Indian Community, Annette Island Res. v. Egan Alaska 1960, 80 S.Ct. 821 363 U.S. 555 4 L Ed 2d 1897.

Young v. Ragen Ill 1949, 69 S Ct 1073, 337 U.S. 235, 93L. Ed 333.

Bantam Books Inc. v. Sullivan R.I. 1963 83 S Ct 631, 372 U.S. 58 9L. Ed. 2d 584.

Winters v. People of State of N.Y., N.Y. 1948 68 S. Ct. 665 U.S. 507 92 L. Ed. 840.

(V) The validity of the following statutes of the State of Illinois are involved.

Illinois revised statutes Chapter 120 Section 75 (1971) and Paragraph 716.

This appears in full detail in the Brief and Argument of Appellant – Appellee (Statutes Involved).

Also Article IX Paragraph 4 (b) of the Illinois Constitution of 1970.

"Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment rate of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county."

(c) The questions presented by the appeal are:

(1) Is the requirement of Illinois Revised Statute

Ch. 120 Paragraph 675 and Paragraph 716 (1971) repugnant to the Constitution of the United States and its amendments. (Due process denied) Hutter denied his day in court.

(2) Does Article IX Paragraph 4 (b) of the Illinois Constitution (1970) deny equal protection of the law? (Permits classification of real estate to the extent that the highest class may be taxed at a rate 2½ times greater than the lowest.)

(d) A brief statement of the case is as follows: As is customary every year, Hutter presented his case to the Assessor with income tax and other requested data. The Assessor refused to change his assessment even though it was some 100% higher than the amount set as just and fair by a Circuit Court, and approved by the States Attorney of Illinois.

Next the annual appearance before the Board of Appeals. The examining agent reviewing the case found the taxes resulting from the assessment amounted to 70% of the gross average income of the property (75 yrs. old) and that the remaining income could not pay for electric, gas and fuel oil. He said that the assessed valuation was so high and out of line compared with the income formula he was instructed to use, that he did not dare to make an adjustment so he would pass the buck to the board members, who of course refused to make any adjustment.

The only avenue open to Hutter was to file an objection to the sale of his property. He had no money to pay the exorbitant taxes under protest and so was denied his day in court. By this cosy manipulation the Assessor can confiscate any piece of property.

While assessing Hutter 150% he found it expedient to assess the John Hancock building 7½% of its $100,000,000.00 value. This example represents a common occurrence faced by the average taxpayer in Illinois.

In the Circuit Court of Cook County, County Division in Misc. No. 72-30 Objection No. 531 1971 taxes and 73-27 Objection No. 722, upon Collector's motion to dismiss, over the objections of Hutter on Constitutional grounds, the court dismissed the objections (see appendix) (January 31, 1974).

In the Appellate Court cases No's 60383-4, Hutter raised the same constitutional questions in pleadings (Brief and Argument). The court affirmed the dismissal by the lower court, after reviewing the appeal. (See decision in appendix.)

The court did not give any specific reason except to quote Illinois case after case in support of its opinion.

The pleadings and judgement of the Appellate Court cite many cases where the Supreme Court of Illinois held that these provisions of the Constitution of Illinois and the statutes involved were constitutional. However no decisions of the Supreme Court of the United States find that these are not in violation of the Federal Constitution.

(e) Both of the above problems are of prime basic interest to all of the owners of real property in Illinois and a definitive decision by this court is essential if the basic constitutional rights of the people of Illinois are to be protected.

There can be no freedom without the right of private property.

The Constitution must protect everyone or in the end it will protect no one.

The power of local government and political control over the courts and legislature has become so great that the protective rights of the people under the constitution have been all but nullified.

In the weeks ahead our very form of government will be endangered. People are losing confidence in our government and constitution. Will this court help to protect us?

The appellants pray the court will grant justice.

Respectfully submitted,
John A. Hutter
Attorney Appellant

APPENDIX

60383)
60384)

IN THE MATTER OF THE APPLICATION OF BERNARD KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE TAXES REMAIN DUE AND UNPAID FOR THE YEARS 1971 AND 1972 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEARS 1971 AND 1972.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
Applicant-Appellee,	)	
v.	)	HONORABLE ROBERT J. DEMPSEY, PRESIDING
JOHN A. HUTTER,	)	
Objector-Appellant.	)	

Mr. JUSTICE EGAN delivered the opinion of the court:

The objector, John A. Hutter, failed to pay real estate taxes assessed against his property for 1971 and 1972; and the County Collector applied for judgment and order of sale of the property to satisfy the delinquent taxes. Hutter filed objections, which the court dismissed on the Collector's motion on the ground that the objector had failed to pay the taxes

under protest before filing his objections as required under the Revenue Act. (Ill. Rev. Stat. 1971, ch. 120, p.716.) The objector contends that the payment under protest requirement of the statute violates his right to due process under the Federal constitution; he also contends that Article IX, p.4(b) of the Illinois constitution of 1970 violates the Federal constitution's guarantee of equal protection of the law in that Article IX, p.4 (b) permits the classification of real property to the extent that the highest class may be taxed at a rate two and one-half times greater than the lowest. In the trial court, the objector's claims were that he had not received notice of any increase in assessment and that the assessments were excessive and, consequently, constructively fraudulent. He did not raise the two constitutional arguments he raises here, but the Collector has made no point of waiver and neither will we.

The objector has filed a two-page brief in this court citing no cases in support of his argument. The Collector has not called our attention to any case dealing expressly with the constitutionality of this or any similar statute but has cited a line of cases holding that the statute provides an adequate remedy at law and that, therefore, injunctive relief was not available under the factual setting of those particular cases.

The history and purpose of the payment under protest provision of the statute are set out in People ex rel. Sweitzer v. Orrington Co., 360 Ill. 289, 195 N.E. 642. The court noted that confusion had existed over the meaning of "payment of taxes under duress." Some taxpayers, uninformed as to the legality of many of the taxes, paid illegal assessments, but recovery was barred by the confusing legal precedent. In addition, even if illegal taxes were paid under duress, there was still no statutory provision for the taxing authorities to make refunds. Consequently, the court pointed out, during the depression many taxpayers organized tax strikes and filed blanket objections creating a "chaotic condition in revenue collections." Immediate legislation was a necessity, and the amendatory act of 1933

provided that the taxpayer must pay under protest and that the collector must refund the tax if the objection was upheld. The court observed that the purpose of the amendment was to "facilitate the collection of taxes and to protect the taxpayer."

Many cases followed from which the rule evolved that the 1933 amendment provided an adequate remedy at law which the taxpayer must pursue in all cases except where the tax is unauthorized by law or where it is levied upon property exempt from taxation. (Ames v. Schlaeger, 386 Ill. 160, 53 N.E. 2d 937; Goodyear Rubber Co. v. Tierney, 411 Ill. 421, 104 N.E. 2d 222; Lackey v. Pulaski Drainage Dist., 4 Ill.2d 72, 122 N.E. 2d 257; and Lakefront Realty Corp. v. Lorenz, 19 Ill.2d 415, 167 N.E.2d 236.) The rule was again discussed in Clarendon Associates v. Korzen, 56 Ill.2d 101, 107, 108, 306 N.E.2d 299:

> "This rule requires that, other than in cases involving the two exceptions, a special ground for equitable jurisdiction, such as fraudulently excessive assessment, must exist and that an adequate remedy at law must not be available.
>
> "There will be cases of fraudulently excessive assessments where the remedy at law will not be adequate and injunctive relief should then be available. However, these are not such cases."

The procedural effect of all these cases is that the statute and other traditional remedies provide all taxpayers who have not paid voluntarily with the right to redress any wrong imposed by tax collecting authorities. And, we judge, the statute is not rendered unconstitutional because the taxpayer is required to pay first and litigate later. In Dodge v. Osborn, 240 U.S. 118, 122, 36 S.Ct. 275, 60 L.Ed. 557, the principal issue was whether the taxpayer could restrain the collection of the income tax or whether he must pursue a statutory remedy which required payment of the tax, an appeal to the Commissioner of Internal Revenue and a suit for recovery of the tax if refused by the

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Commissioner. The Supreme Court held that injunctive relief was not available. A claim that the statutory procedure denied the taxpayer due process was answered quite succinctly:

> "There is a contention that the provisions requiring an appeal to the Commissioner of Internal Revenue after payment of the taxes and giving a right to sue in case of his refusal to refund are wanting in due process and therefore there is jurisdiction. But we think it suffices to state that contention to demonstrate its entire want of merit."

And in Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 595, 599, 51 S.Ct. 608, 75 L.Ed. 1289, it was held:

> "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained.
>
> "The right of the United States to exact immediate payment and to relegate the taxpayer to a suit for recovery, is paramount."

The objector's other contention that Article IX, p.4(b) of the 1970 Illinois constitution violates the equal protection provision of the Federal constitution because it permits classification of property for the purpose of taxation has been answered adversely to the objector in People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 272-274, 319 N.E.2d 55. For these reasons the order of the circuit court is affirmed.

ORDER AFFIRMED.

GOLDBERG, J. and SIMON, J. concur.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION

IN THE MATTER OF THE APPLICATION OF BERNARD J. KORZEN AS COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS, FOR JUDGMENT AND ORDER OF SALE AGAINST LANDS AND LOTS UPON WHICH THE GENERAL TAXES REMAIN DUE AND UNPAID FOR THE YEAR 1970 AND FOR JUDGMENT FIXING THE CORRECT AMOUNT OF ANY TAX PAID UNDER PROTEST FOR THE YEAR 1971	Misc. No. 72-38 Obj. No. 531

ORDER

THIS CAUSE coming on to be heard on the Collector's Motion to Dismiss the objection for the reason that the Objector has failed to comply with the requirements of Section 675, Chapter 120, Illinois Revised Statutes, in that it has not paid any amount of its 1971 Real Estate Taxes under protest. Upon hearing arguments of counsel and the court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Collector's Motion to Dismiss be and the same is hereby granted.

2. That judgment be and the same is hereby entered in favor of the People of the State of Illinois and against Tract described in the objection filed herein for the full amount of the 1971 general real estate taxes plus interest.

3. There is no just reason to delay the enforcement of this order or appeal therefrom.

ENTER:
ASSOCIATE JUDGE ROBERT J. DEMPSEY

ENTERED

DATED: _____

Appellate Court of Illinois No. 60383
60384

In The matter of the application of the County Treasurer for judgement and sale of unpaid taxes for the years 1971 and 1972.

Applicant-Appellee

Vs.

John Hutter

Objector-Appellant

Notice Of Appeal

Notice is hereby given, that the appellant, John A. Hutter appeals the entire decision of the Appellate Court of Illinois dated April 9, 1975, to the Supreme Court of the United States.

This appeal is taken under paragraph (2) of rule 1257 and or other pertinent rules which provide in general that where the "Validity of a statute of any state on grounds of it being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its Validity."

Signed _____
John A. Hutter

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